

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs, September 25, 2007

CHEVON TRAMAINÉ MAYETTE v. THOMAS JOSEPH WHITE

Direct Appeal from the Circuit Court for Knox County
No. 93973 Hon. Bill Swan, Circuit Judge

No. E2007-00498-COA-R3-CV - FILED JANUARY 8, 2008

Respondent has appealed from a sentence punishing him for numerous violations of the Trial Court's orders. No transcript of the evidence was filed. The appeal raises issues of fact. We affirm.

Tenn. R. App. P.3 Appeal as of Right; Judgment of the Circuit Court Affirmed.

HERSCHEL PICKENS FRANKS, P.J., delivered the opinion of the court, in which CHARLES D. SUSANO, JR., J., and D. MICHAEL SWINEY, J., joined.

Thomas J. White, Knoxville, Tennessee, *pro se*.

Gregory P. Isaacs, Knoxville, Tennessee, for appellee.

OPINION

Background¹

On May 15, 2003, petitioner filed for an Order of Protection against respondent, White, alleging that respondent was her ex-fiancé, and that they had a child, T.M.W. who was one month old at the time. Petitioner alleged that respondent had attacked her the previous day, while she was holding the child, and an Ex Parte Order of Protection was issued on May 16, 2003. An

¹No transcripts of any evidentiary hearing are in the record, and the background information was gleaned from the technical record.

Order of Protection was then entered by agreement on May 29, 2003, which stated that the parties could have social contact. Respondent was ordered to attend domestic violence counseling for 52 weeks, and a further review of the matter was set for July 17, 2003.

Petitioner moved to Amend the Order of Protection on July 23, 2003 to provide for no contact, because on the previous day, respondent had choked her, slammed her into the pavement, and beat her head against a car. An Amended Order of Protection was entered on July 31, 2003, prohibiting all contact between the parties, but allowed respondent to visit the minor child, with supervision by petitioner's mother. A review hearing was set for August 28.

On August 28, 2003, another Order of Protection was entered, and a review hearing was set for October 9. Following the hearing on October 9, the Court entered an Order Finding Partial Compliance, which stated that respondent had attended 4 counseling sessions, and scheduled the next review hearing for January 22, 2004. Further reviews were held and other Orders were entered.

Petitioner filed another Motion to Amend Order of Protection, seeking to halt respondent's visitation with the minor child, because she alleged that on September 7, 2004, respondent came to her home and she allowed him to see the child, but he then attacked her and raped her with her daughter in the house. She averred that she feared for her safety as well as her daughter's safety, and that respondent continually called her and harassed her. Responding to an Order to Show Cause and/or Writ of Attachment, the Trial Court entered an Order Granting Bail, which found respondent to be a threat to petitioner and the public, and set his bond at \$50,000. Both parties were appointed legal counsel.

In a hearing on November 18, 2004, respondent was found to have committed five violations, and he entered an Alford plea. Respondent was sentenced to 50 days' incarceration, was ordered to have no contact with petitioner, and custody of the child was given to petitioner with no visitation by respondent. Subsequently, petitioner filed another Motion for an Order to Show Cause and/or Writ of Attachment, stating that respondent had called her 25 times on her cell phone.

Another Order of Protection was entered, and the parties agreed that there had been 13 violations (phone calls), and respondent was sentenced to 10 days per violation, for a total of 130 days, with no early release. Respondent was ordered not to call petitioner, and another Order Granting Bail was entered, and respondent's bail was set at \$15,000.

Petitioner then filed another Motion for an Order to Show Cause and/or Writ of Attachment, stating that respondent had been released from jail on April 5, 2005, and had called her approximately 22 times since that date, and had issued threats. An Order of Protection was entered, wherein the Court found there had been 22 violations of the prior Order of Protection, and that respondent had subjected petitioner to domestic terrorism. At that time, respondent was sentenced to 230 days' in jail. Petitioner filed yet another Motion for an Order to Show Cause and/or Writ of Attachment, stating that on June 12, 2006, she went to a child support hearing because respondent

appealed the child support order, and respondent talked to her and touched her outside the courtroom, and told her he would drop the appeal, but he just wanted to see her. She averred that respondent then dropped his appeal, but followed her to her car, grabbed her cell phone, and dialed a number. She stated that respondent had called her on her cell phone numerous times since then.

Petitioner then filed another Motion for an Order to Show Cause and/or Writ of Attachment on July 7, 2006, stating that respondent was still calling her on her cell phone, and that respondent told her he had gotten a notice from the Court and wanted to know if she had “turned him in”. Petitioner stated that respondent became angry when she wouldn’t talk to him, and cussed and threatened her. She stated that she had to have her phone cut off, and an Order of Protection was entered following the hearing, wherein the Court found that respondent had repeatedly called and pursued petitioner, and had threatened her, and would tell her “this is worth 10 days.” The Court held that respondent had no respect for the Orders of the Court, and sentenced respondent to 1240 days’ incarceration.

Respondent appealed and filed his Brief *pro se*, raising these issues:

1. Whether respondent was convicted of more violations than stated in the Show Cause Motions?
2. Whether all the violations stated in the Show Cause Motions were violations of the Court’s orders?
3. Whether excessive penalties were imposed upon respondent?
4. Whether respondent’s failure to follow proper procedures pursuant to the Tennessee Rules of Appellate Procedure warrants dismissal of the appeal?

Respondent’s Brief only contains two paragraphs of argument in support of his contentions (although his one-page statement of facts contains arguments, but no citations of authority). As best we can determine from his Brief, it appears he is trying to take issue with the evidence presented by the petitioner’s cell phone records, and argues that those records do not always match up with the Show Cause Motions petitioner filed.

We do not have any other evidence to review in this case, other than the cell phone records,² because respondent has filed no statement of the evidence nor transcript from the hearings filed in this record.

As this Court has often-stated, “in the absence of a transcript or statement of the

² Without further explanation, this Court cannot determine what is shown in these cell phone records (although it is probably safe to assume that the non-redacted calls shown on the records were apparently made by respondent to petitioner).

evidence, we must conclusively presume that every fact admissible under the pleadings was found or should have been found favorably to the appellee.” *In re: Rockwell*, 673 S.W.2d 512, 516 (Tenn. Ct. App. 1983). In this case, we are unable to question the Trial Court’s finding that 124 violations of the Order occurred, despite respondent’s protestations. Moreover, a trial court may sentence a respondent up to ten days for each violation. *See Thigpen v. Thigpen*, 874 S.W.2d 51 (Tenn. Ct. App. 1993). Accordingly, we find there is no merit in respondent’s contentions.

Petitioner argues that this appeal should be dismissed for respondent’s failure to comply with the Tennessee Rules of Appellate Procedure. Since we are affirming the Trial Court’s Judgment, the issue raised by the petitioner becomes moot.

For the foregoing reasons, we affirm the Judgment of the Trial Court, assess the costs to Thomas Joseph White, and remand.

HERSCHEL PICKENS FRANKS, P.J.